

LABOUR DEPARTMENT

The 1st March, 1985

No. 9/5/84-Lab/1530.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s Hastinapur Metals Private Ltd., G.T. Road, Kundli (Sonapat).

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 171 of 1983

between

SHRI AYYAS AND OTHER WORKMEN AND THE MANAGEMENT OF M/S HASTINAPUR METALS PRIVATE LTD., G.T. ROAD, KUNDLI (SONEPAT)

Present.—

Shri S.N. Solanki, A.R. for the workmen.
Shri D.N. Vohra, A.R. for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workmen S/Shri Ayyas, Jai Chand, Rishi Ram, Jagbir Singh, Jai Singh, Hari Chand, Yasin Khan, Mehar Singh and Jeet Ram and the management of M/s Hastinapur Metals Private Ltd., G.T. Road, Kundli (Sonapat), to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. 57422-27, 57429-35, 57437-42, 57444-49, 57458-63, 57465-70, 57472-77, 57479-85, 57487-92 all of dated 28th October, 1983:—

Whether the termination of services of S/Shri Ayyas, Jai Chand, Rishi Ram, Jagbir Singh, Jai Singh, Hari Chand, Yasin Khan, Mehar Singh and Jeet Ram are justified and in order? If not, to what relief are they entitled?

2. These 9 references bearing No. 171 to 174 and 176 to 180 were ordered to be consolidated,—*vide* my order, dated 19th December, 1984, because common questions of law and facts were involved. I further directed that the proceedings shall be recorded in reference No. 171 of 1983.

3. On receipt of the order of references, notices were issued to the parties. The parties appeared. The date of employment, monthly wages, nature of job and the date of termination of these workmen are as under:—

Name	Date of Employment	Nature of job	Monthly Wages	Date of termination
1. Shri Jai Chand	.. 1-1-80	Helper	Rs. 400	2-6-83
2. Shri Rishi Ram	.. 1-9-80	Fitter	Rs. 429	2-6-83
3. Shri Jagbir Singh	.. 1-7-79	Turner	Rs. 420	2-6-83
4. Shri Jai Singh	.. 13-8-80	Boringman	Rs. 415	2-6-83
5. Shri Hari Chand	.. 1-8-81	Helper	Rs. 410	2-6-83
6. Shri Yasin Khan	.. 1-10-78	Turner	Rs. 575	2-6-83
7. Shri Mehar Singh	.. 1-8-80	Helper	Rs. 400	2-6-83
8. Shri Jit Ram	.. 1-12-81	Helper	Rs. 568	2-6-83
9. Shri Ayyas	.. 18-6-79	Helper	Rs. 430	2-6-83

4. The workmen further alleged that the respondent chose to terminate their services all of a sudden after giving a complete go-bye to the provisions of the Industrial Disputes Act, 1947.

5. In the replies to all these claims filed by the respondent, the stand taken was that the services of the workmen were terminated because of paucity of orders and unavoidable financial hardships. It is further alleged that the workmen were offered notice pay and retrenchment compensation but they refused to receive the same and as such the amounts were remitted to them by money orders.

6. As I was recording the statement of one witness of the management, happily a settlement was arrived at, whereunder the management has agreed to reinstate the workmen as and when vacancy occurs looking to the workload of the respondent concern. In that behalf the management shall issue to the workmen notice for re-employment within 15 days as per the seniority list of the workmen furnished today. In case, any workman does not join his duties within stipulated period, he shall forfeit his right of re-employment.

7. As regards other benefits claimed by the workmen they are to be paid in toto mentioned below :—

Shri Ayyas Parshad	.. Rs. 1,988.50
Shri Jai Chand	.. Rs. 1,634.47
Shri Rishi Ram	.. Rs. 1,809.90
Shri Jagbir Singh	.. Rs. 2,165.05
Shri Jai Singh	.. Rs. 1,714.75
Shri Hari Chand	.. Rs. 1,819.94
Shri Yasin Khan	.. Rs. 3,036.49
Shri Mehar Singh	.. Rs. 1,640.67
Shri Jit Ram	.. Rs. 1,694.46

8. These amounts cover full and final settlement of the workmen till today. This amount shall be paid by the management to each workman against receipt within one month from today and if they so desire, the management can place on record a photo copy of the receipt given by the workmen. In terms of this settlement, no dispute survives for adjudication. The references are answered and returned accordingly. A copy of this award be placed upon the files of references number 172 to 174 and 176 to 180 all of 1983. There is no order as to cost.

Dated the 14th February, 1985

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.

Endorsement No. 171/83/316, dated the 21st February, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.

No. 9/5/84-6Lab./1533.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to published the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s United Engineering Works, Hissar Road, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 7 of 1982

between

SHRI INDERJIT, WORKMAN AND THE MANAGEMENT OF M/S UNITED ENGINEERING WORKS, HISSAR ROAD, ROHTAK.

Present.—

Shri S. N. Vats, A. R. for the workman.
Shri M. M. Kaushal, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 16 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the applicant Shri Inderjit and the management of M/s United Engineering Works, Hissar Road, Rohtak, to this Court, for adjudication,— vide Labour Department Gazette Notification No. ID/R1K/180/81/393, dated the 4th January, 1982:—

Whether the termination of service of Shri Inderjit was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the applicant is that he was employed with the respondent for the last about 12 years and that his services were terminated by the respondent on 27th August, 1981, after holding a fair of an enquiry in which he was not given opportunity of cross-examination and so much so, he had no prior notice of such domestic enquiry.

3. In the reply filed by the respondent, it is alleged that the applicant was charge-sheeted for serious misconduct as he had committed theft of zinc during the course of his employment and a valid domestic enquiry was held, in which, he was found guilty. On merits, it is admitted that the workman was permanent employee of the respondent for the last about less than 12 years. It is asserted that a valid and proper domestic enquiry was held in which the workman was given full opportunity of participation and on the basis of findings of the Enquiry Officer, order of termination was passed.

4. In the replication filed by the workman, pleas taken by the respondent have been controverted.

5. On the pleadings of the parties, the following issues were settled for decision on 9th July, 1982:—

(1) Whether the domestic enquiry conducted by the management is fair and proper?

(2) Whether the termination of service of Shri Inderjit was justified and in order? If not, to what relief is he entitled?

6. On the said date my learned predecessor Shri B. L. Goyal further ordered that the issue regarding domestic enquiry shall be tried as preliminary issue. Under these circumstances, I am seized of decision of Issue No. 1 only, upon which both the parties were allowed to adduce their evidence. The management examined MW-1 Shri K. C. Nagpal, who held the domestic enquiry and MW-2 Shri K. S. Bhatnagar. The workman appeared as his own witness as WW-1. Authorised Representatives of the parties heard at length. Documents perused. My findings on the issue regarding domestic enquiry are as under:—

7. *Issue No. 1.*—To prove this issue, the management examined MW-1 Shri K. C. Nagpal, Enquiry Officer, who made a detailed statement regarding the procedure adopted by him in holding the enquiry. He also stated that on 14th May, 1981, the first date fixed for holding enquiry, the workman appeared and participated in the enquiry proceedings and also signed the proceedings sheet but later on tried to erase his signatures. In corroboration is the statement of Shri K. S. Bhatnagar MW-2 who stated that the charge-sheet Exhibit MW-1/13 was served upon the workman and that the reply of the workman is Exhibit MW-2/1. The workman appeared as WW-1 stated that he was wrongfully dismissed on 27th August, 1981 and that he was never served a charge-sheet, nor allowed to participate in the domestic enquiry and that a trumped up charge of theft was foisted upon him to dispense with his employment.

8. The learned authorised representative of the respondent took me through entire enquiry proceedings copies of which are Exhibit MW-1/9. A perusal of the same goes to show that on the first date i. e. 14th May, 1981, the workman was present. In token of his presence he had affixed his signatures at point A but later on he tried to erase the same with ink. Furthermore the workman also gave a reply Exhibit MW-1/11 which is dated the 26th May, 1981. If the workman had not participated in the enquiry, there was no occasion for him to send this reply to the Enquiry Officer. The law is settled that usually domestic enquiries are held by layman not well conversant with rules of evidence and the Courts have held on numerous occasions that sophisticated rules of evidence are not applicable to domestic enquiry proceedings unless the procedure adopted by the Enquiry Officer, principles of natural justice have been flouted or some serious prejudice has been caused to the workman. In the present case, no such allegations have been made by the workman. His pleas is that he never participated in any such domestic enquiry held by the management which seems to be palpably false, because from the evidence on record, it is fully proved that the workman did participate in the enquiry proceedings and it has been so stated by the Enquiry Officer MW-1 Shri K. C. Nagpal, and this fact also figures in the enquiry report Exhibit MW-1/18. So, viewed from any angle, the report of the Enquiry Officer does not suffer from any factual or legal flaws and that in holding domestic enquiry the Enquiry Officer fully complied with the principles of natural justice. So, I find this issue in favour of the management.

9. Relying upon the report of the Enquiry Officer, the management chose to pass an order of dismissal on 27th August, 1981. Copy of the same is Exhibit MW-2/9. Now the question would be as to whether the order of dismissal calls for any interference by this Court under section 11-A of the Industrial Disputes Act, 1947. The allegation against the workman was that he had committed theft of 100 grams of zinc which he was found carrying in a tiffin box when he was coming out of the factory premises after his duty hours on 20th April, 1981. It is not on record as to what was the price of 100 grams of zinc in those days. But the price cannot be in any case more than Rs200. The question would be as to whether the punishment of dismissal awarded to the workman was proportionate to the gravity of the offence. In my opinion, it was not. The workman may be the sole bread earner of the family. Awarding punishment of dismissal for such a petty offence will amount to killing a fly with a sledge-hammer. On behalf of the respondent 1979 Lab.I.C. 102, Management of W.S. Insulator India Ltd. Madras versus Mohd. Moosa and others was cited to prop up the contention that once the Tribunal finds that the domestic enquiry was valid and proper it cannot sit in judgment over the findings of the Enquiry Officer and interference with the conclusion arrived at by it. In the authority under reference, the Tribunal solely relied upon the findings of the Criminal Court. In the present case also the workman stood trial for an offence of theft and was acquitted by the Court of learned Judicial Magistrate 1st Class, Rohtak,—vide his judgment dated the 1st March, 1982. Copy of the same is Exhibit WW-1/1. In the present case this Court has not at all relied upon the judgment of the criminal Court while holding the validity or otherwise of the domestic enquiry. So, this authority has no application to the facts of the present case. Another authority cited was 1977 Lab. I. C. 968, Pure Drinks Private Ltd. versus Mumbai Mazdoor Sabha and another. In this authority it was held that in a departmental enquiry rules of evidence contemplated by the Evidence Act are not strictly applicable.

10. So, taking into consideration the totality of circumstances, I find that the punishment of dismissal awarded to the workman was highly disproportionate to the gravity of offence. So, I order for the reinstatement of the workman but to curb his mercenary tendencies, which prompted him to commit theft of zinc during the course of his employment, I award him back wages to the extent of 20 per cent only. However, he will have the benefits of continuity of back service. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 12th February, 1985.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endst. No. 7/82/295, dated the 21st February, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab/1534.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, respect of the dispute between the workmen and the management of M/s. Haryana State Minor Irrigation Tubewell Corporation, Chandigarh.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 12 of 1984

between

SHRI GIAN CHAND, WORKMAN AND THE MANAGEMENT OF M/S. HARYANA STATE
MINOR IRRIGATION TUBEWELL CORPORATION, CHANDIGARH

Present—

Shri T. C. Gupta, A. R. for the workman.

Shri B. K. Bansal, J. E., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Gian Chand and the management of M/s Haryana State Minor Irrigation Tubewell Corporation, Chandigarh, to this Court, for adjudication,—vide Labour Department, Gazette Notification No. 6996-7001, dated the 20th February, 1984:—

Whether the termination of services of Shri Gian Chand is justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The workman alleged that he was employed as T/Mate with the respondent in the month of November, 1979 and worked as such up to 7th March, 1983, from which date the respondent chose to terminate his services unlawfully in gross violation of the provisions of section 25F of the Industrial Disputes Act, 1947.

3. A reply was filed by the respondent, controverting the claim of the petitioner in toto. It is alleged that the workman was employed by the Field Officer for a specific project purely on temporary basis and as such his services could be terminated without any prior notice and that the workman remained absent from duty on 23rd February, 1983.

4. On the pleadings of the parties, the following issue was settled for decision on 16th November, 1984:—
(1) Whether the termination of services of Shri Gian Chand is justified and in order? If not, to what relief is he entitled?

5. The workman appeared as his own witness as WW-1 and the management examined MW-1 Shri B. K. Bansal, its Junior Engineer.

6. Heard. Documents perused. My findings on the issue framed are as below:—

Issue No. 1.—

7. It is admitted case of the respondent that the workman was employed as T/Mate in the month of December, 1979 and served as such up to 7th March, 1983. It is also its case that prior to the termination of his employment, the workman was not given any notice or paid any retrenchment compensation as envisaged under section 25F of the Industrial Disputes Act, 1947. The only plea propounded by the respondent is that since the workman was employed only for the execution of a specific project, after completion of which, his services could be dispensed with without any notice. This contention runs counter to the provisions of section 25-F of the Industrial Disputes Act, 1947. Since the workman had completed more than 240 days of actual work with the respondent, on the date his services were terminated, it was incumbent upon the respondent to have given one month notice and have paid retrenchment compensation as provided under section 25-F of the said Act. The same was not done by the respondent. So, the order of termination violates the provisions of section 25-F of the Industrial Disputes Act, 1947 and as such the same is unsustainable and in the process the workman is ordered to be reinstated forthwith with continuity of service and with full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 16th February, 1985.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endst. No. 12/84/318, dated the 21st February, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak